

May 16, 2008

**DECISION AND ORDER
OF THE DEPARTMENT OF ENERGY**

Appeal

Name of Petitioner: William A. Hewgley

Date of Filing: April 18, 2008

Case Number: TFA-0253

On April 18, 2008, William A. Hewgley filed an Appeal from a determination issued to him by the Department of Energy's (DOE) Office of Inspector General (OIG). In that determination, OIG responded to a request for information that Mr. Hewgley filed under the Freedom of Information Act (FOIA), 5 U.S.C. § 552, as implemented by the DOE in 10 C.F.R. Part 1004. This Appeal, if granted, would require OIG to perform an additional search and either release any newly discovered responsive documents or issue a new determination justifying the withholding of any portions of those documents.

I. Background

On January 30, 2008, Mr. Hewgley submitted a FOIA request to the FOIA and Privacy Act Office at DOE Headquarters (DOE/FOIA), for "all records exchanged between the DOE Headquarters Inspector General's Office and the FBI on or relating to the requester covering the period January 1, 1978 and the date of this request." *See* Letter from William A. Hewgley to FOIA Officer, U.S. Department of Energy (January 30, 2008) (Request Letter). DOE/FOIA forwarded the request to OIG because any document responsive to the request, if it existed, would fall under the jurisdiction of that office.

OIG conducted a search of its records which revealed that records responsive to Mr. Hewgley's request were destroyed in accordance with the DOE Records Inventory and Disposition Schedule pursuant to Disposition Authority N1-434-00-1.¹ *See* Letter from John Hartman, Assistant Inspector General for Investigations, OIG, to William A. Hewgley (March 26, 2008) (Determination Letter). On April 18, 2008, the Office of Hearings and Appeals (OHA) received Mr. Hewgley's Appeal, which challenged the adequacy of the search as it relates to the destruction of responsive documents. *See* Letter from William A. Hewgley to OHA (Appeal Letter). In his Appeal, Mr. Hewgley requests a copy of the applicable portion of Disposition Authority N1-434-00-1, in addition to a list of records destroyed, including the author of each record, the recipient, and the date of the record itself. *Id.* at 1.

¹ Disposition Authority N1-434-00-1 may be accessed at http://cio.energy.gov/documents/ADM_22.pdf.

II. Analysis

In responding to a request for information filed under the FOIA, it is well established that an agency must “conduct a search reasonably calculated to uncover all relevant documents.” *Truitt v. Dep’t of State*, 897 F.2d 540, 542 (D.C. Cir. 1990) (citations omitted). “[T]he standard of reasonableness which we apply to agency search procedures does not require absolute exhaustion of the files; instead, it requires a search reasonably calculated to uncover the sought materials.” *Miller v. Dep’t of State*, 779 F.2d 1378, 1384-85 (8th Cir. 1985); accord *Truitt*, 897 F.2d at 542. We have not hesitated to remand a case where it is evident that the search conducted was in fact inadequate. *See, e.g., Todd J. Lemire*, 28 DOE ¶ 80,239 (August 26, 2002) (Case No. VFA-0760).²

In reviewing this Appeal, we contacted OIG to ascertain the scope of its search for responsive documents. *See* Email from Avery Webster, Attorney-Examiner, OHA, to Adrienne Martin, Freedom of Information and Privacy Acts Officer, OIG (April 22, 2008). OIG informed us that it conducted an electronic search of the OIG database using Mr. Hewgley’s name which located two investigative case files³ responsive to his request.⁴ *See* Email from Ruby Len, Attorney-Adviser, OIG, to Avery Webster, Attorney-Examiner, OHA (April 25, 2008).

According to the DOE’s Records Inventory and Disposition Schedule, OIG files containing information or allegations that do not result in a formal investigation must be destroyed after ten years. Given that Mr. Hewgley’s responsive case files were over 20 years old at the time of the FOIA request, they had been destroyed pursuant to Disposition Authority N1-434-00-1. As for the documentation relating to the list of records destroyed, including the author of the record, the recipient, and the date of the record itself, OIG advised that no such documentation exists. *Id.*

The courts in *Truitt* and *Miller* require that an agency responding to a FOIA request must “conduct a search reasonably calculated to uncover all relevant documents.” Based on the foregoing, we find that OIG performed a search reasonably calculated to reveal documents responsive to Mr. Hewgley’s request. Accordingly, the search was adequate under the FOIA and, therefore, Mr. Hewgley’s appeal should be denied.

It Is Therefore Ordered That:

- (1) The Appeal filed by Mr. William A. Hewgley on April 18, 2008, OHA Case No. TFA-0253, is hereby denied.
- (2) This is a final order of the Department of Energy of which any aggrieved party may seek judicial review pursuant to the provisions of 5 U.S.C. 552(a)(4)(B). Judicial review may be

² All OHA decisions issued after November 19, 1996, may be accessed at <http://www.oha.doe.gov/foia1.asp>.

³ OIG advises that the two case files containing Mr. Hewgley’s name were created in August 1987 and did not result in formal investigations.

⁴ The Offices of Audit Services, Investigations, and Inspections and Special Inquiries also conducted a search for responsive documents and located no documents responsive to Mr. Hewgley’s request.

sought in the district in which the requester resides or has a principal place of business, or in which the agency records are situated, or in the District of Columbia.

Poli A. Marmolejos
Director
Office of Hearings and Appeals

Date: May 16, 2008